

6731

RECORDATION NO. _____ Filed & Recorded

SEP 12 1972 1232 PM

STATE COMMERCE COMMISSION

RECONSTRUCTION AND CONDITIONAL SALE
AGREEMENT

Dated as of June 1, 1972

among

FIRST SECURITY ~~XXXXXX~~ BANK OF UTAH,
NATIONAL ASSOCIATION, as Agent,

PACCAR INC.

FIRST NATIONAL BANK OF NEVADA

and

THE WESTERN PACIFIC RAILROAD COMPANY

RECEIVED
SEP 12 12 24 PM '72
I.C.C.
FEE OPERATION BR.

RECONSTRUCTION AND CONDITIONAL SALE
AGREEMENT dated as of June 1, 1972, among
FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION (hereinafter called the
Vendor), as Agent under a Finance Agreement
dated as of the date hereof (hereinafter
called the Finance Agreement), FIRST
NATIONAL BANK OF NEVADA (hereinafter called
the Vendee), the corporation named in Item 1
of Annex A hereto (hereinafter called the
Builder) and THE WESTERN PACIFIC RAILROAD
COMPANY (hereinafter called the Railroad).

WHEREAS the Vendee has acquired or will acquire
all right, title and interest in certain railroad equipment
(hereinafter called the Hulks) pursuant to a Hulk Purchase
Agreement (hereinafter called the Hulk Purchase Agreement),
dated as of June 1, 1972, with the seller named in Item 2
of Annex A hereto (hereinafter called the Seller), and will
subject the same to a security interest in favor of the
Vendor for the purpose of causing the Hulks to be recon-
structed; and

WHEREAS the Vendor has acquired or will acquire
security title to the Hulks pursuant to the Transfer Agree-

ment (hereinafter called the Transfer Agreement) dated as of June 1, 1972, between the Vendor and the Vendee, in substantially the form of Annex B hereto, for the purpose of causing the same to be reconstructed as described herein and thereupon selling its interest in the same to the Vendee and the Vendee has agreed to purchase the Hulks as so reconstructed (the reconstructed equipment described in Schedule A hereto being hereinafter called the Equipment); and

WHEREAS the Hulks have been or will be delivered to the Builder and the Builder has agreed with the Vendor to cause the Hulks to be reconstructed as required hereby to enable delivery of the Equipment to be made to the Vendee in accordance herewith; and

WHEREAS the Vendee and the Railroad are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit B attached hereto, leasing the Equipment to the Railroad, subject to this Agreement, which Lease will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act concurrently with the filing of this Agreement thereunder; and

WHEREAS the Railroad, in order to obtain the use of the Equipment and to induce the Vendor to enter into this Agreement, is willing to guarantee to the Vendor and the Builder the due and

punctual payment of certain sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed into the Equipment as described in Schedule A hereto and will deliver the Equipment to the Vendee on behalf of the Vendor and the Vendee will accept delivery of and the Vendor and the Vendee will pay for the Equipment as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Vendee, the Vendor, the Builder and the Railroad (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The design, quality and component parts of the Equipment

will conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of delivery of the Equipment.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment, on behalf of the Vendor, to the Vendee at such place or places within the United States of America specified in Schedule A hereto or if Schedule A does not specify a place or places, at the place or places within the United States designated from time to time by the Vendee and the Railroad, freight charges, if any, prepaid, on or before December 31, 1972; provided, however, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plants, equip-

ment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for prior to December 31, 1972, shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence or pursuant to Article 3, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Vendor and the Vendee shall have no obligation to accept or pay the Builder or the Seller for any Equipment so excluded from this Agreement but may, in lieu thereof, assign all their right, title and interest therein to the Railroad and the Railroad will indemnify and hold harmless the Vendor and the Vendee for any and all claims and liabilities in respect thereof.

If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the second paragraph of Article 2 hereof or if any Equipment is excluded from this Agreement pursuant to the first paragraph of Article 3 hereof or if the aggregate Purchase Price in respect of all the Equipment proposed to be settled for on any Closing Date shall not have been paid to the Seller and the Builder as their interests shall appear (otherwise than due

to the failure of the Builder to comply with the provisions thereof contemplated to be complied with by the Builder), the Railroad shall be obligated to accept such equipment and pay the full Purchase Price therefor to the Builder and the Seller as their interests may appear, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, if the Builder and the Railroad shall mutually agree by means of a conditional sale, equipment trust or other appropriate method of financing.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Railroad) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Railroad) shall execute and deliver to the

Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

ARTICLE 3. Purchase Price and Payment. The cost of the Hulks (the "Hulk Purchase Price") and the estimated base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The base reconstruction cost is subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Railroad and the term "Reconstruction Cost" shall mean the base reconstruction cost as so increased or decreased. The term "Purchase Price" as used herein means the sum of the Hulk Purchase Price and the Reconstruction Cost. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been or is then being made under this Agreement and the Reconstruction and Conditional Sale Agreement referred to in Item 3 of Annex A hereto (thereafter called the Other Agreement), would, but for the provisions of this sentence, exceed \$6,750,000 (or such higher amount as the

Vendee may at its option agree to) the Builder and the Railroad will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreement, reduce the aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreement to not more than \$6,750,000 (or such higher amount as aforesaid).

For the purpose of settlement therefor, the Equipment shall be divided into not more than four groups of units of the Equipment (each such group being hereinafter called a Group) unless the Vendee, the Vendor and the Builder shall otherwise agree. The term "Closing Date" with respect to any Group shall mean such date not earlier than August 1, 1972, and not later than December 31, 1972, occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Builder by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in

Salt Lake City, Utah, or New York, New York, are authorized to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 80% of the Purchase Price of all units of the Equipment covered by this Agreement and the Other Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$5,400,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and pursuant to clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreement (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); provided, however, that if settlement is also being made on such Closing Date for units of

railroad equipment under the Other Agreement, the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Prices payable on such Closing Date under this Agreement is of the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreement; and

(b) In 23 semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Prices of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the Conditional Sale Indebtedness shall be payable on January 1, 1974, and subsequent instalments shall be payable semiannually thereafter on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date, to and including January 1, 1985. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 8-1/4% per annum, and such interest shall be payable, to the extent

accrued, on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day) commencing January 1, 1973. The principal amount of the Conditional Sale Indebtedness payable on each of the 23 Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 23 installments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Railroad promptly after each Closing Date a payment schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest at the rate of $9\frac{1}{4}\%$ per annum, to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and, if requested by the Vendor or where made to the Builder, shall be made by bank wire transfer. Except as

provided in Article 6 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate that the Vendee will furnish to the Vendor that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that such portion plus an amount equal to the balance of such Purchase Price shall be paid by the Vendor to the Builder and the Seller, as their interests may appear.

The Vendor shall be under no obligation to make payment to the Builder or the Seller unless there shall have theretofore been delivered to the Vendor the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned:

(a) the Certificate or Certificates of Acceptance and the Certificate or Certificates of Delivery contemplated by § 1 of the Lease with respect to the Equipment in the Group;

(b) invoice of the Builder for the reconstruction of the Equipment in the Group and of the Seller for the Hulks so reconstructed accompanied by or having endorsed thereon a certification by the Vendee and the Railroad as to the correctness of the price stated therein;

(c) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Vendor and the Investors referred to in the Finance Agreement, dated as of such Closing Date stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Railroad and is a valid agreement binding upon the Railroad, (ii) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) security title to the units of Equipment in such Group is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under this Agreement, and the rights of the Railroad under the Lease, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement, or if any approval is necessary, it has been obtained, (v) this Agreement and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor hereunder in any State of the United States of America or the District of

Columbia and (vi) registration of this Agreement is not required under the Securities Act of 1933, as amended; and said opinion shall cover such other matters as shall be reasonably requested by the Vendor;

(d) an opinion or opinions of counsel for the Vendee, dated as of such Closing Date, addressed to the Vendor, stating that the Transfer Agreement, this Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding instruments enforceable in accordance with their terms; and

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Vendor, covering the matters referred to in clauses (i) and (ii) of subparagraph (c) in so far as they relate to the Railroad and clauses (iii) and (iv) of subparagraph (c) and stating that the Railroad is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Vendor, covering the matters referred to in clause (ii) of subparagraph (c) in so far as it relates to the Builder and stating that (i) the Builder is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) at the time of delivery of the units of the Equipment in such Group to the Vendor hereunder, such units were free of all claims, liens, security interests and other encumbrances of the Builder or of anyone claiming through the Builder.

Counsel may qualify any opinion as to the enforceability of any instrument by a general reference to bankruptcy, reorganization, moratorium or other laws affecting enforcement of creditors' rights generally. Counsel for each of the parties may assume due authorization, execution and delivery of the documents executed by the other parties in rendering its opinion; counsel for the Railroad may in rendering its opinion rely on the opinion of counsel for the Builder as to title to the Equipment at the time of delivery thereof under the Reconstruction and Conditional Sale Agreement and in giving the opinions specified in subparagraphs (e), and (f), counsel may rely, to the extent appropriate, as to any matter governed by the law of Nevada on the opinion of counsel for the Vendee as to such matter. In giving its opinion pursuant to

subparagraph (c), counsel may rely on the opinion of counsel for the Railroad, the Builder and the Vendee as to all matters of law of jurisdictions other than the United States or the State of New York involved in said opinion.

The obligation of the Vendor to make payment for the Equipment is expressly conditioned on the Vendor having on deposit pursuant to the Finance Agreement sufficient available funds to make such payment. The Vendor shall not be obligated to make any such payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in this Agreement could constitute an event of default, shall be subsisting under this Agreement or if a petition for reorganization under Section 77 of the Bankruptcy Act shall be filed by or against the Railroad unless such petition shall be dismissed.

Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks and delivery of the Equipment hereunder to the Vendee except to the extent that the Builder has fully complied with the Builder's obligations with respect to such reconstruction and delivery.

The Railroad hereby represents and warrants to the Builder, the Vendor and the Vendee, that (i) this Agreement has been duly authorized by it and lawfully executed and delivered for a valid consideration and (assuming due authorization, execution and delivery by the other parties hereto) is a valid and existing agreement binding

upon the Railroad in accordance with its terms; and
(ii) no approval is required from any regulatory body with respect to the entering into or performance by the Railroad or the Seller of this Agreement or the Hulk Purchase Agreement.

The Builder hereby represents and warrants to the Vendor and the Vendee that this Agreement has been duly authorized by it and lawfully executed and delivered for a valid consideration and (assuming due authorization, execution and delivery by the other party or parties thereto) this Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it in accordance with its terms.

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 is specifically subject to the fulfillment, on or before each Closing Date, of the following conditions (any of which may be waived by the Vendee):

(a) the Vendor shall concurrently pay or cause to be paid to the Builder and the Seller the amounts contemplated to be paid by it as provided in this Article 3 and the documents required by this Article 3 shall have been delivered;

(b) no event of default of the Railroad specified herein or Event of Default of the Railroad under the Lease, nor any event which with lapse of time and/or demand provided for herein or in the Lease could constitute such an event of default or Event of Default, shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinion of counsel required by § 13 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and Article 19 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee (which terms as used in this paragraph includes the Vendor to the extent payments under the Lease are made to the Vendor as contemplated therein) shall have actually received sufficient "income or proceeds from the Equipment" to make such payments.

Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) or of any of the Railroad's obligations thereunder and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Railroad of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Railroad and the Equipment and to the Vendor's rights under the Lease against the Railroad and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any

assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee under the Lease or for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon, due and payable on, or on the business day after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee

of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or on the business day after, the date corresponding to the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Railroad, as guarantor, as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. Notwithstanding anything to the contrary contained in Article 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to such amount.

ARTICLE 4. Title to the Equipment. The Vendor

shall and hereby does retain the full security title to and property in the Hulks delivered to the Builder hereunder for reconstruction and shall continue to retain such title during the entire period that the Hulks are being reconstructed and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Equipment and shall have kept and performed all its agreements herein contained in respect thereof, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Railroad as provided in this Agreement. Any and all additions to the Hulks and the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Hulks or the Equipment shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute

right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor.

However, the Vendor, if so requested by the Vendee at that time, will (a) execute and deliver to the Vendee a release of the Vendor's security interest in the Equipment transferring its security title thereto and property therein to the Vendee, free of all liens, security interests and other encumbrances created or retained hereby, (b) execute and deliver to the Vendee for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 6 hereof in respect of such Equipment and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such release or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such release or instruments or to file such certificate within a reasonable time after written demand by

the Vendee.

ARTICLE 5. Taxes. All payments to be made by the Vendee and the Vendor hereunder will be free of expense to the Vendor and the Builder for collection or other charges and will be free of expense to the Vendor and the Builder with respect to the amount of any local, state, Federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipt taxes in the nature of or-in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the

title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor or the Builder directly and paid by the Vendor, or the Builder, as the case may be, the Vendee shall reimburse the Vendor or the Builder, as the case may be, upon presentation of an invoice therefor, and any amounts so paid by the Vendor or the Builder shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor or the Builder, as the case may be, for any impositions so paid unless the Vendor or the Builder shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor or the Builder, as the case may be), or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance and Repaid; Casualty Occurrences. The Vendee agrees that, at its own cost and expense, it will cause each unit of the Equipment to be maintained in good order and repair.

In the event that any unit of the Equipment shall

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price

of said Equipment.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment for the benefit of the Vendor and the Vendee at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it. Such insurance shall be payable to the Vendor, the Vendee and the Railroad as their interests may appear.

It is further understood and agreed that any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article 6. If the Vendor shall receive any other insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 6 without deduction for such insurance proceeds, the Vendor shall pay such

insurance proceeds to the Vendee. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, any insurance proceeds paid to the Vendor prior to the Payment Date next succeeding a Casualty Occurrence shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest or (ii) open market commercial paper rated at least "A-1" or its equivalent by Standard & Poor's Corporation or a comparable national rating agency or (iii) certificates of deposit of banks in the United States of America having capital and surplus aggregating at least \$25,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called Investments), as may be specified in any such direction. Any such Investments shall from time to time be

sold and proceeds reinvested in such other Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon the sale or payment at maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 6. Any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly cause to be paid to the Vendor an amount equal to such deficiency. The Railroad will cause to be paid all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

ARTICLE 7. Obligations of Railroad, as Guarantor.

The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of the Conditional Sale Indebtedness and interest thereon, and unconditionally guarantees to the Vendor and the Builder the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 3

hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; provided, however, that after the payment to the Vendor of all sums payable under this Agreement, the Railroad shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment by the Railroad, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 8. Reports and Inspections. On or before August 1 in each year, commencing with the year 1973, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding June 30 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of

the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be

required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of a new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Railroad or its affiliates to use the Equipment

tions, changes, replacements and additions at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Railroad shall not be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under

and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Railroad or served by the Railroad upon it in connection therewith.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Railroad or any affiliate of the Railroad (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Railroad or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Railroad or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. Except as otherwise provided in the Lease, the

Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely

affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessment or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation,

use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or the transfer or release of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Railroad or the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance or release of security title to, the Equipment, as provided in the last paragraph of Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Vendor makes no warranties whether written, oral, statutory or implied including the warranties of

merchantability or fitness for a particular purpose, with respect to the Hulks or the Equipment or in connection with this Agreement or the delivery and sale of the Equipment hereunder.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification contained in Items 4 and 5 of Annex A hereto are herein incorporated as part of this Article 13.

The warranties and indemnities of the Builder contained in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Builder con-

any of the obligations of the Builder to reconstruct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof or relieve the Vendor, the Vendee or the Railroad of their respective obligations to the Builder contained or referred to in Articles 1, 2, 3, 5, 7 and 13 hereof and this Article 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Railroad, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 3 hereof or in Article 22 hereof) to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for 15 days; or

(b) the Vendee or the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or

against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Railroad under this Agreement), and, unless such proceedings shall have

been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad, as the case may be, or for their respective property in connection with any such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) an event of default shall occur under the Other Agreement referred to and defined in Article 3 hereof; then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Railroad set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Railroad each acknowledge the

right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate of 9-1/4% per annum, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the limitations of Article 3 hereof, or the Railroad wherever situated. The Vendee or the Railroad, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Railroad in writing to

that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Railroad set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Railroad or any other person and for such purpose may enter upon the premises of the Vendee or the Railroad

or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall (subject to the rights of the Railroad set forth in Article 11 hereof), at its own expense forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity

retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession

expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling

payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Railroad shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitations of Article 3 hereof, pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid first to the Vendee to the extent of the Vendee's interest therein, and then to the Railroad, to the extent of its interest therein.

The Vendee will, subject to the limitations of Article 3 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee, the Builder and the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Railroad, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Rail-

road will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendee and the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Payment of Expenses. The Vendee will pay all reasonable costs and expenses incident to this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the Vendor.

ARTICLE 20. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedule and Annex hereto, exclusively and completely states the rights of the Vendor, the Builder, the Vendee and the Railroad with respect to the Hulks and the Equipment and supersedes all other agree-

ments, oral or written, with respect to the Hulks and the Equipment except the Hulk Purchase Agreement. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Railroad and, prior to the Cut-off Date, the Builder.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its place of business at the following specified addresses:

(a) to the Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Thomas Cuthbert, Trust Officer,

(b) to the Vendee, at Reno, Nevada 89504, Attention: D. O. Raggio, Executive Vice President,

(c) to the Railroad, at 526 Mission Street, San Francisco, California 94105, Attention: Vice President, Finance,

(d) to the Builder, at the address specified in Item 1 of Annex A hereto,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Railroad, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendor, the Vendee, the Railroad or the Builder, solely by reason of the fact that such person is an incorporator, stockholder, director, or officer, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 6, the last paragraph of Article 14 and under Articles 5, 8, 9, 10, 12 and 13 hereof shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Lease. The Railroad shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease pro-

vides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Railroad's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Nevada; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

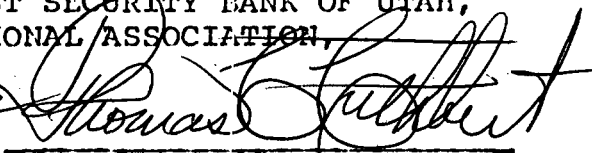
ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of June 1, 1972, for convenience, the actual date or dates of execution

hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.


FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION,

by


~~Thomas E. Culbert~~ Vice President

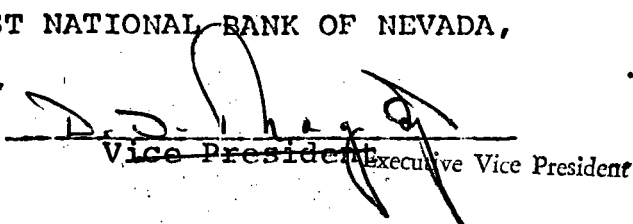
[Corporate Seal]

Attest:


~~Scott D. Allen~~
Trust Officer

FIRST NATIONAL BANK OF NEVADA,

by


~~D. D. Hagg~~ Vice President Executive Vice President

[Corporate Seal]

Attest:


~~E. Martinelli~~ Secretary

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE ~~CO.~~,)

On this 25th day of August 1972, before me personally appeared *Thomas C. Culbert*, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Sheri Stark

Notary Public

[Notarial Seal]

My Commission Expires

March 3, 1975

THE WESTERN PACIFIC RAILROAD
COMPANY,

by

E. L. Van Dollen
Vice President

[Corporate Seal]

Attest:

N. D. Brew

Assistant Secretary

PACCAR INC,

by

B. C. Jameson
Vice President

[Corporate Seal]

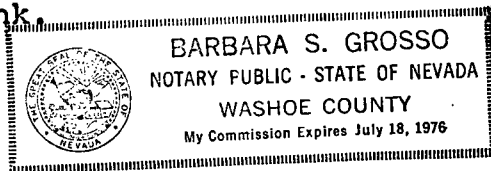
Attest:

W. H. Sudder

Assistant Secretary

STATE OF NEVADA,)
) ss.:
COUNTY OF WASHOE ,)

On this 24th day of August, 1972 before me
personally appeared J. O. Liggio, to me personally
known, who, being by me duly sworn, says that he is, a ^{Executive} Vice
President of FIRST NATIONAL BANK OF NEVADA, that one of the
seals affixed to the foregoing instrument is the corporate
seal of said bank, that said instrument was signed and
sealed on behalf of said bank by authority of its Board of
Directors, and he acknowledged that the execution of
the foregoing instrument was the free act and deed of said
bank.



Barbara S. Grosso
Notary Public

[Notarial Seal]

My Commission Expires 7-18-76

STATE OF CALIFORNIA,)
) ss.:
CITY AND COUNTY OF SAN FRANCISCO,)

On this *21st* day of *August* 1972, before me personally appeared **E. L. VAN DELLEN** to me personally known, who, being by me duly sworn, says that he is a Vice President of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Diane L. Fafoutis
Notary Public

[Notarial Seal]

My Commission Expires *Dec. 14* 1975.

STATE OF WASHINGTON).

COUNTY OF KING)

SS.:

On this 28th day of August 1972, before me personally appeared B.C. Jameason, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[Notarial Seal]

My Commission Expires

ANNEX A

Item 1: PACCAR Inc., a Delaware corporation, having an address at 1400 North 4th Street, Renton, Washington 98055.

Item 2: Sellers, The Railroad and Tidewater Southern Railway Company.

Item 3: The Reconstruction and Conditional Sale Agreement dated as of June 1, 1972, among the Vendor, the Vendee, ACF Industries, Incorporated, and the Railroad.

Item 4: The Builder warrants that the Equipment will be reconstructed in accordance with the requirements, specifications and standards set forth in Article 1 of the Reconstruction and Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Vendor, Vendee or the Railroad and not manufactured by the Builder, warrants the materials and workmanship used in reconstruction of the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger

Cars with Interchange of Traffic: The Builder shall be given reasonable opportunity to verify any claim of defects in such workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Vendee and terminate two years after such delivery. The Builder makes no warranty of merchantability or fitness for a particular purpose. The Vendor's, Vendee's and Railroad's rights under the foregoing warranty shall be their sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the reconstruction and delivery of the Equipment, except for the patent indemnification included in Item 5 of this Annex A.

The Builder further agrees with the Vendor and the Vendee that neither the inspection as provided in Article 2 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Vendor or the Vendee of any of their rights under this Item 4.

The Railroad, the Vendor and the Vendee agree with

Vendee or the Builder because of the use in or about the reconstruction of the Hulks or any unit thereof or operation of any of the Equipment of any article or material specified by the Vendee or the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Vendee or the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee or the Railroad and purchased or otherwise acquired by the Builder for use in or about the reconstruction of the Hulks or any unit thereof, or operation of any of the reconstructed portion of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment

and delivery of every such claim; rights and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charges against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charges against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ADDITIONAL AGREEMENT

Article 2 of the Reconstruction and Conditional Sale Agreement to which this Annex is attached is amended by adding at the end thereof the sentence, "The Vendee agrees that the inspection of the Equipment provided for in this Article 2 shall not as to any units thereof be delayed beyond 72 hours from notification of the Vendee that such unit is ready for delivery."

SCHEDULE A

Railroad's Road

Quantity	Description of Equipment	Hulk Purchase Price	Base Reconstruction		Purchase Price	
			Per Unit	Total	Per Unit	Total
196	50' 70-ton Insulated Box Cars	\$6,700	\$12,200	\$2,391,200	\$18,900	\$3,704,400
	W.P. 61101-61296	\$1,313,200				

Specifications: P.C.-271 dated April 10, 1972 and Builder's reconstruction proposals to Western Pacific Railroad Company dated April 14, 1972, May 1, 1972, and May 15, 1972

Time and Place of Delivery of Reconstructed Units:
September-November 1972
at Renton, Washington

June 1, 1972

TRANSFER AGREEMENT

First Security Bank of Utah, National Association
79 South Main Street
Salt Lake City, Utah 84111

Attention: Corporate Trust Department

The undersigned is purchasing the used railroad equipment described in Schedule A hereto (hereinafter called the Hulks) from the Seller named opposite the description of such equipment in Schedule A hereto. The undersigned desires to have such Hulks rebuilt. The undersigned hereby agrees with you as follows:

1. In order to cause the Hulks to be reconstructed and sold to us by you on conditional sale, the undersigned hereby assigns and transfers to you a security title to the Hulks.

2. You will hold security title under and pursuant to one of the two Reconstruction and Conditional Sale Agreements dated as of June 1, 1972 (hereinafter individually called an Agreement), among ACF Industries, Incorporated and PACCAR Inc (hereinafter individually called a Builder), respectively, and you, The Western Pacific Railroad Company, and us, and you will direct

that the Hulks be reconstructed, pursuant to the applicable Agreement in accordance with the applicable specifications. In accordance with the applicable Agreement the undersigned will direct the Hulks to be delivered to the respective Builder on your behalf at such point or points within the United States of America as such Builder shall designate.

3. Upon completion of the reconstructions, the reconstructed Hulks will be delivered and conditionally sold by you to us in accordance with the applicable Agreement.

4. If Hulks are excluded from the applicable Agreement, you shall assign your interest in such Hulks, without warranty, as provided in the third paragraph of Article 2 of the applicable Agreement.

5. It is understood and agreed that this Agreement is being entered into solely to permit you to effectuate the foregoing and your interests in the Hulks, in present form or as rebuilt, is a security interest and that we shall at all times be the beneficial owner of the same.

If the foregoing is in accordance with your understanding, please sign a copy of this letter in the space pro-

vided and return it to the undersigned, whereupon this letter shall become a valid and binding agreement between us.

Very truly yours,

FIRST NATIONAL BANK
OF NEVADA,

by

Vice President

[Seal]

ACCEPTED:

FIRST SECURITY BANK
OF UTAH, NATIONAL ASSOCIATION,

by

Vice President

STATE OF NEVADA,

)

) SS.:

COUNTY OF WASHOE

2,)

On this

day of

1972, before me

personally appeared and

, to me personally known, each of

whom, being by me duly sworn, says that he is a Vice Presi-

dent of FIRST NATIONAL BANK OF NEVADA, that the seal affixed

to the foregoing instrument is the corporate seal of said

bank, that said instrument was signed and sealed on behalf

of said bank by authority of its Board of

and he acknowledged that the execution of the foregoing

instrument was the free act and deed of said bank.

Notary Public

[Notarial Seal]

My Commission Expires

SCHEDULE A

<u>Description of Hulks</u>	<u>Seller</u>
111 50'1" 50-ton Insulated Box Cars (without 50-ton trucks, body bolsters, draft gear and center sill sections)	The Western Pacific Railroad Company
139 50' 50-ton DF Insulated Box Cars (less 50-ton trucks, body bolsters, draft gear and center sill section)	The Western Pacific Railroad Company
57 50' 50-ton DF Insulated Box Cars (less 50-ton trucks, body bolsters, draft gear and center sill section)	Tidewater Southern Railway Company

LEASE OF RAILROAD EQUIPMENT

Dated as of June 1, 1972

between

FIRST NATIONAL BANK OF NEVADA

and

THE WESTERN PACIFIC RAILROAD COMPANY

LEASE OF RAILROAD EQUIPMENT, dated as of June 1, 1972, between FIRST NATIONAL BANK OF NEVADA (hereinafter called the Lessor) and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee).

WHEREAS, the Lessor, the Lessee and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION (hereinafter called the Vendor) have entered into two Reconstruction and Conditional Sale Agreements dated as of June 1, 1972 (hereinafter called the Reconstruction and Conditional Sale Agreements), with ACF INDUSTRIES, INCORPORATED, and PACCAR INC. (hereinafter individually called a Builder and together the Builders), respectively, wherein the Vendor has agreed to sell to the Lessor its interest in the railroad equipment described in Schedule A hereto after it has been reconstructed by the Builders;

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Reconstruction and Conditional Sale Agreements on or prior to December 31, 1972 (such units described in Schedule A hereto being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Reconstruction and Conditional Sale Agreements, subject to all the rights and remedies of the Vendor under such Reconstruction and Conditional Sale Agreements:

Section 1. Delivery and Acceptance of Units. The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the applicable Reconstruction and Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and the Builder a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

Section 2. Rental. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 25 consecutive semiannual payments, each payable on January 1 and July 1 in each year (or if such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Rental Payment Date, commencing January 1, 1973. The first such semiannual rent payment shall be in an amount equal to .0229167% of the Purchase Price (as defined in the applicable Reconstruction and Conditional Sale Agreement) of each Unit for each day elapsed from and including the date such Unit is settled for under such Reconstruction and Conditional Sale Agreement to January 1, 1973. The remaining 24 semiannual rental payments in respect of each Unit subject to this Lease shall be an amount equal to 5.69912% of the Purchase Price of each such Unit subject to this Lease.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available Salt Lake City funds (including but not limited to the payments required under § 6 hereof) for the account of the Lessor, care of the Vendor at its office at 79 South Main Street, Salt Lake City, Utah 84111, attention of Corporate Trust Department. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Reconstruction and Conditional Sale Agreements due and payable on, or within one day after

such payments are due hereunder and, so long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Reconstruction and Conditional Sale Agreements shall have occurred and be continuing, any balance shall be paid by the Vendor to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Reconstruction and Conditional Sale Agreements, including the Lessee's rights by subrogation under Article 7 thereof, or the Builders or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization

of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder or under either Reconstruction and Conditional Sale Agreement in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Reconstruction and Conditional Sale Agreements. If an event of default should occur under either Reconstruction and Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Reconstruction and Conditional Sale Agreements (in its capacity as guarantor or otherwise). If a Declaration of Default (as defined in the Reconstruction and Conditional Sale Agreements) should be made under either Reconstruction and Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under such Reconstruction and Conditional Sale Agreement as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 16 of the Reconstruction and

Conditional Sale Agreements that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

Section 4. Identification Marks. The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the identifying number set forth in Schedule A to the respective Reconstruction and Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Reconstruction and Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of

new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease. Nothing contained in this Section 4 shall bar the Lessor from having its name, initials or other insignia on the Units.

Section 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability,

any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state or, if no such taxes would be payable, then up to the amount of taxes which would be payable in any other taxing jurisdiction charging the lowest rate of such taxes without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Reconstruction and Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all

impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Reconstruction and Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor or the Builder pursuant to Article 5 of the Reconstruction and Conditional Sale Agreements not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with respect to impositions

are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. Payment for Casualty Occurrences.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease, the Lessee shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. On the Rental Payment Date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty

Value (as hereinafter defined) of such Unit as of such Rental Payment Date, in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit shall be determined by multiplying the Purchase Price of such Unit by the applicable percentages set forth opposite each date in the following schedule:

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
1/1/73	106.0050%	7/1/79	65.7272%
7/1/73	104.7591	1/1/80	59.0353
1/1/74	103.0701	7/1/80	55.1903
7/1/74	101.0913	1/1/81	51.2138
1/1/75	98.8389	7/1/81	47.1062
7/1/75	96.4004	1/1/82	42.8821
1/1/76	90.8264	7/1/82	38.5346
7/1/76	88.0907	1/1/83	34.0754
1/1/77	85.2087	7/1/83	29.4952
7/1/77	82.1863	1/1/84	24.8087
1/1/78	76.0408	7/1/84	20.0040
7/1/78	72.7402	1/1/85	15.0000
1/1/79	69.3020		

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Reconstruction and Conditional Sale Agreements and will furnish appropriate evidence of such insurance coverage upon request of Lessor. Any damages receivable from others, any salvage value paid by the Lessee, any condemnation payments and any net insurance proceeds, together with any interest received thereon pursuant to Article 6 of the Reconstruction and Conditional Sale Agreements, as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries) shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6 and the excess of such Recoveries, if any,

shall belong to the Lessor. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this § 6 without deduction for such Recoveries the Lessor shall pay such Recoveries to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such Recoveries shall remain the property of the Lessor. In the event of the loss, theft, irreparable damage or complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at San Francisco, California, on the date of the Casualty Occurrence, less an allowance of \$6.00 per gross ton for dismantling such Unit. Upon such payment of the salvage value of such Unit, the title to such Unit, subject to the rights of the Vendor under the Reconstruction and Conditional Sale Agreements shall pass to and vest in the Lessee.

All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

Section 7. Annual Reports. On or

before August 1 in each year, commencing with the year 1973, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Units then leased hereunder and/or covered by the Reconstruction and Conditional Sale Agreements, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Reconstruction and Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

Section 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the

material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws

and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws and rules so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Reconstruction and Conditional Sale Agreements.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Reconstruction and Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold

harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Reconstruction and Conditional Sale Agreements or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

Section 9. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part

of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Reconstruction and Conditional Sale Agreements and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Reconstruction and Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations

shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee hereunder or under the Reconstruction and Conditional Sale Agreements under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Reconstruction and Conditional Sale Agreements), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Reconstruction and Conditional Sale Agreements shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings

shall have been commenced, whichever shall be earlier, then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which

may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of $8\frac{1}{4}\%$ per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and including, without limitation,

(iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the 7% investment credit attributable to the reconstructed basis of the Equipment (hereinafter called the Investment Credit) allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 14 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction authorized with respect to a Unit under Section 167 of the Code utilizing the "class lives" and asset depreciation ranges" prescribed in accordance with Section 167(m) of said Code

for an asset described in Asset Guideline Class No. 40.1 as described in Revenue Procedure 72-10, 1972 IRB 8 (hereinafter called the Depreciation Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 14 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit or Depreciation Deduction or both shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance

of the Investment Credit or Depreciation Deduction or both in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of § 14 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of

against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the

rights of the Lessor hereunder (including, but not limited to, the rights under §§ 5, 6, 9 and 14) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Reconstruction and Conditional Sale Agreements, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Reconstruction and Conditional Sale Agreements, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge or cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor after the date hereof or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease or under the Reconstruction and Conditional Sale Agreements, the Lessee shall be entitled to the possession of the Units and to the use thereof of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon the lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Reconstruction and Conditional Sale Agreements. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Reconstruction and Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety, provided that such assignee

or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

Section 12. Return of Units upon Expiration of Term; Purchase Options. As soon as practicable on or after the expiration of the term of this Lease with respect to the Units but in any event not later than 90 days after such expiration, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of the Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor, the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same;

provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. The Lessee shall advise the Lessor of the Units, if any, which have suffered a Casualty Occurrence as of the expiration of the Lease and if the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which within three months after the expiration of this Lease the Lessor shall elect to abandon, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately

preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit so abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect, by written notice delivered to the Lessor not less than six months prior to the end of the term of this lease, to purchase all, but not fewer than all the Units, covered by this Lease at the end of the term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are

unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Section 13. Opinion of Counsel. On each Closing Date (as defined in the Reconstruction and Conditional Sale Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same), with

adequate corporate power to enter into the Reconstruction and Conditional Sale Agreements and this Lease;

B. the Reconstruction and Conditional Sale Agreements and this Lease have been duly authorized, executed and delivered by the Lessee and constitute a valid legal and binding agreement of the Lessee, enforceable in accordance with their terms:

C. the Reconstruction and Conditional Sale Agreements and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and such filing, recording and deposit will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor and the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Reconstruction and Conditional Sale Agreements or this Lease;

E. the entering into and performance of the Reconstruction and Conditional Sale Agreements or this Lease will not result in any breach of, or constitute a default

under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or the Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold rights of the Lessee hereunder in and to the Units.

On each Closing Date the Lessor will deliver to the Lessee an opinion of counsel for the Lessor stating that the Reconstruction and Conditional Sale Agreements and this Lease have been duly authorized, executed and delivered by the Lessor and are legal and valid instruments, binding upon the Lessor and enforceable against the Lessor in accordance with their terms.

Section 14. Federal Income Taxes. The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits or other benefits as are provided by the Code (as defined in § 9 of this Lease), to an owner of property, including (without limitation) an allowance for the Investment Credit and the Depreciation Deduction (each as defined

in § 9 of this Lease) with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Depreciation Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the portion of the basis of the Units attributable to reconstruction constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, that portion of the Purchase Price of the Units attributable to reconstruction (such amount being the Purchase Price of the Units less that portion thereof attributable to the Hulks as specified in Schedule A to the Reconstruction and Conditional Sale Agreements) will qualify as "new section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the owner of the Units, that portion of the basis of the Units attributable to reconstruction will not have been used by any

person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iv) at the time the Lessor becomes the owner of the Units, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect to the portion of the basis of the Units attributable to reconstruction; and (v) at all times during the term of this Lease, that portion of the basis of the Units attributable to reconstruction will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If (other than for the reasons set forth below) the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit with respect to the reconstructed portion of any Unit or Depreciation Deduction with respect to any Unit, the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Investment Credit or Depreciation Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had

been entitled to utilization of all or such portion of the Investment Credit or Depreciation Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit or Depreciation Deduction; provided, however, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor all or any portion of such Investment Credit or Depreciation Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (except as provided in § 2 hereof) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Hulk Purchase Agreement or the Transfer Agreement (as defined in the

Reconstruction and Conditional Sale Agreements) or the Reconstruction and Conditional Sale Agreements without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Investment Credit or Depreciation Deduction, as applicable, in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Investment Credit or Depreciation Deduction, as applicable;

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the Depreciation Deduction, as applicable;

(vi) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such Investment Credit or Depreciation Deduction, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Lessor (provided that the Lessee shall upon demand of the Lessor pay to the Lessor the expenses of any such contest as a condition of prosecuting the same);

or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (vi) by the Lessor without the prior written consent of the Lessee; or

(vii) any other fault of the Lessor which directly causes the loss of any of the aforesaid tax benefits; provided, however, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other document shall not be deemed to have caused the loss of such tax benefit under this clause (vii).

If action is taken by the Lessor with respect to the disallowance of all or a portion of the Investment Credit or Depreciation Deduction and the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Investment Credit or Depreciation Deduction disallowed, computed at the rate of 8-1/4% per annum from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor in accordance with the provisions of this § 14. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

If the Lessor's right to claim all or any part of the full Investment Credit or Depreciation Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee, then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Units set forth in § 2 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this § 14 and the rental applicable to such Unit pursuant to § 2 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the next preceding paragraph of this § 14 over (ii) the difference between (A) an amount equal to interest at the rate of 8-1/4% per annum on the amount of any federal income tax paid by the Lessor on account of the disallowance or inability to claim the Investment Credit or Depreciation Deduction on such Unit and (B) the amount of any interest to which the Lessor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount

calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor promptly on demand.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this § 14 shall survive the expiration or other termination of this Lease.

Section 15. Recording; Expenses. The Lessee will cause this Lease, the Reconstruction and Conditional Sale Agreements and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and depositing and refiling, re-recording and redepositing required of the Lessor under Article 18 of the Reconstruction and Conditional Sale Agreements and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit when or required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the Reconstruction and Conditional Sale Agreements; and the Lessee will promptly furnish to the Vendor and the Lessor

evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Reconstruction and Conditional Sale Agreements shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor will pay or cause to be paid the reasonable costs and expenses involved in the preparation and printing of this Lease and the Lessee will pay the reasonable costs and expenses involved in the recording of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

Section 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9-1/4% per annum of the overdue rentals for the period of time during which they are overdue.

Section 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the

United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, Reno, Nevada 89504, Attention:
D.O. Raggio, Executive Vice President;

if to the Lessee, 526 Mission Street, San
Francisco, California 94105, Attention: Vice
President--Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Section 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by

duly authorized officers of the Lessor and the Lessee.

Section 19. Execution. This Lease may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of June 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Nevada; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FIRST NATIONAL BANK OF NEVADA,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

THE WESTERN PACIFIC RAILROAD COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF NEVADA)
) ss.:
COUNTY OF WASHOE)

On this day of 1972, before me
personally appeared , to me personally
known who, being by me duly sworn, says he is a Vice
President of FIRST NATIONAL BANK OF NEVADA, that one of
the seals affixed to the foregoing instrument is the
corporate seal of said bank, that said instrument was this
day signed and sealed on behalf of said bank by authority
of its Board of Directors and he acknowledged that the
execution of the foregoing instrument was the free act and
deed of said bank.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF CALIFORNIA)

CITY AND COUNTY OF) ss.:
SAN FRANCISCO)

On this day of 1972, before me
personally appeared , to me personally
known, who, being by me duly sworn, says that he is Vice
President of THE WESTERN PACIFIC RAILROAD COMPANY, that one
of the seals affixed to the foregoing instrument is the
corporate seal of said corporation, that such instrument
was this day signed and sealed on behalf of said corporation
by authority of its Board of Directors, and he acknowledged
that the execution of the foregoing instrument was the free
act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

SCHEDULE A

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Lessee's</u>		<u>Unit</u>		<u>Aggregate Purchase Price</u>
		<u>Road Numbers</u>		<u>Purchase Price</u>		
111	50' 70-ton Dual Air Pac Box Cars	W.P. 65001-65111		\$27,000		\$2,997,000
196	50' 70-ton Insulated Box Cars	W.P. 61101-61296		18,900		3,704,400